IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5225 of 2001
with
SPECIAL CIVIL APPLICATION NO.5247 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M/S. KWALITY TUBE INDUSTRIES

Versus

UNION OF INDIA

Appearance:
1. Special Civil Application No. 5225 & 5247 of 2001
MR MIHIR H JOSHI for Petitioner
MR DN PATEL for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 16/07/2001

ORAL(COMMON)JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Rule. Mr.D.N.Patel, Ld.Central Govt.Standing Counsel appears and waives service of rule on behalf of respondents. At the request of both sides matter is taken up for final hearing today.

2. The Additional Commissioner, Central Excise Division, Surat-I passed orders on 29.8.95 and 30.10.1996 Against these orders, appeals were preferred before the Commissioner (Appeals) of Central Excise & Customs, Surat and these two appeals were rejected by the order dated 11.5.1999 on the ground that the appeals were barred by time. Two appeals were then filed, one by the firm and the other by the proprietor of the firm before Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) at Mumbai and both these appeals, arising out of the order dated 11.5.1999, came up before the Customs, Excise & Gold (Control) Appellate Tribunal and the tribunal after hearing both the sides passed order on 3.2.2000/29.2.2000 on the applications for stay and waiver of the deposit of duty and penalty under section 35 F of the Act on the assessee and its proprietor. On behalf of the present petitioners an offer was made to deposit the full duty and 50% of the penalty imposed on the assessee. After hearing the departmental representative, the Customs, Excise and Gold (Control) Appellate Tribunal accepted the offer and directed that these amounts being deposited within a month from the receipt of the order dated there shall be waiver of deposit of balance amount of penalty imposed on the assessee as well as on its proprietor and stay their recovery. Thereafter, when the appeals were taken up for recording compliance on 24.4.2000 appeals were dismissed on 6.5.2000 as compliance with stay order was not shown.

3. The petitioners herein failed to deposit the amounts against duty and penalty as ordered by the Customs, Excise and Gold (Control) Appellate Tribunal within the period grzanted by the CEGAT. The case set up by them before this Court is that the concerned lawyer did not communicate the said order and therefore there was failure on their part to carry out their obligation under this order dated 3.2.2000/29.2.2000. In substance, the petitioners herein simply want to say that this order dated 3.2.2000/29.2.2000 could not be complied by them within time for want of knowledge of the order because of lapse on the part of their lawyer, and therefore, they may be allowed to take the benefit of the CEGAT's order dated 3.2.2000/29.2.2000 even now and thereafter their

appeals be heard and decided on merits.

4. Having heard learned counsel for both the sides, in the facts and circumstances of the case, it is directed that in case the present petitioners deposit the amounts as directed by the tribunal on 3.2.2000/29.2.2000 even now, at the earliest, but not later than 31.8.2001 their appeals shall be heard and decided on merits by the Customs, Excise and Gold (Control) Appellate Tribunal subject to payment of costs of Rs.2,500/- per case by the petitioners to the respondents. It is further ordered that the order dated 6.5.2000 by which the appeals were dismissed by CEGAT for noncompliance of stay order shall not come in the way of the CEGAT to decide these appeals on merits subject to the condition imposed on the petitioners in this order. Rule in each of these two petitions is made absolute accordingly with no order as to costs.

16.7.2001 (M.R.CALLA,J)

(N.G.GANDHI,J)

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